



COUNTY OF ORANGE

INTEGRATED WASTE MANAGEMENT DEPARTMENT

Janice V. Goss, Director
320 N. Flower Street, Suite 400
Santa Ana, CA 92703

www.oclandfills.com
Telephone: (714) 834-4000
Fax: (714) 834-4183

June 6, 2006

Ms. Bobbie Garcia
California Integrated Waste Management Board
Permitting and Enforcement Division
P.O. Box 4025 MS-16
Sacramento, CA 95812-4025

Dear Ms. Garcia:

Subject: Comments on the Proposed Permit Implementation Regulations – AB 1497

The County of Orange Integrated Waste Management Department (IWMD) is submitting for the California Integrated Waste Management Board's (CIWMB) consideration, comments on the proposed Permit Implementation Regulations (regulatory text dated February 28, 2006) enacted by the passing of Assembly Bill 1497 which became effective on January 1, 2004. IWMD operates three large municipal solid waste landfills in Orange County and will be directly affected by the proposed regulations once they become effective. Our comments are to ensure the proposed regulations can be implemented logistically without compromising our ability to operate our landfills and provide long term disposal services to our customers.

Our comments are divided into two categories which comprises of critical issues and minor issues. The red strikethrough text is recommended for deletion and the blue text is recommended for addition.

Critical Issues

- 1. Maintain the 150 days for Enforcement Agencies and CIWMB to issue a new or revised Solid Waste Facility Permit.** Under current regulations, a new or revised Solid Waste Facility Permit (SWFP) is issued to an applicant within 150 days of the enforcement agency (EA) receiving an application. Under the proposed regulations, an additional 30 days would be added to the 150 days in order to allow the EA to hold an informational meeting upon filing the application as complete and correct. We believe the existing timeframe of 150 days is already lengthy and adding 30 days to the permitting process is unreasonable and hinders our ability to efficiently operate a landfill and to meet the disposal needs of our serving communities. While we are not asking the CIWMB to shorten the permitting process to less than 150 days, we are asking the CIWMB to maintain the 150 days by shortening the 60 days as outlined in proposed §21650(g), Title 27 of the California Code of Regulations (CCR) to 30 days. During this timeframe, the EA is drafting the proposed SWFP for Board consideration. We believe it does not require 60 days for an EA to draft a proposed SWFP

considering that the majority of the permits are less than five pages long and follows a template that is provided by the CIWMB. Thirty days is more than adequate for the EA to complete this task.

Section 10303(a)(1), Title 27 CCR states that the EA “*shall determine within 30 calendar days of receipt whether or not an application for a Solid Waste Facilities Permit is **complete**.*” Public Resources Code §44008(a) then states, “*A decision to issue or not issue the permit shall be made by the enforcement agency within 120 days from the date that the application is deemed **complete** pursuant to ...*”.

The EA’s decision to file the application package is made prior to holding the informational meeting. Proposed §21660.2 states,

“The informational meeting shall be held **after** acceptance of the application package as complete and **correct** by the EA and within 60 days of receipt of the application by the EA. The EA shall submit to the board a copy of the informational meeting notice at time of issuance. The board shall post the notice on its web site as a way to further inform the public.”

It is clear that extending the permitting process to 180 days would conflict with Public Resources Code §44008(a) and §10303(a)(1), Title 27 CCR.

2. **Shorten the Timeframe for the Modified Permit Process.** The Permit Implementation Regulations proposes the Modified Permit process concept which would grant the Executive Director of the CIWMB authority to revise a SWFP provided that the revision is a nonmaterial change, is not a significant change, and would not require additional mitigations, conditions, or prohibitions to the operating SWFP. Based on the criteria that would have to be met for the Modified Permit process, the majority of changes would be administrative in nature in terms of making corrections to the SWFP due to typographical errors or updating other regulatory agency permits listed on the permit. The timeframe proposed for the Modified Permit process is 150 days. We believe the 150 days is too long and needs to be shortened to 90 days. As stated in our first comment, the EA does not require 60 days to draft a new SWFP let alone making editorial changes and updates to an existing permit. Similarly, the Executive Director does not need 60 days to concur or object on a SWFP where the change is strictly administrative versus a change in design or operation. The 60 days in statute is to accommodate the board members since Board meetings are only held once a month. The SWFP is not presented in a public forum setting for the Modified Permit process. Therefore, we are suggesting that EAs be given 30 days to file an application, 30 days to make the necessary changes and updates to SWFP, and 30 days for the Executive Director to concur or reject the permit. By shortening the schedule for processing permits to a more reasonable timeframe, the permitting process becomes less bureaucratic for an operator.

3. **Informational Meeting and Public Noticing Requirements.** As part of the permitting process, the CIWMB has introduced the concept of an informational meeting would allow the public to be informed of the changes being proposed for a solid waste facility. Although the proposed regulations state that the informational meeting is strictly “informational”, the decision for the EA to officially act on the application is delayed after the meeting. In many facets, the meeting is a public hearing where the public is allowed to voice their concerns, comments, and potentially impact the permitting process. We believe that in order for the informational meeting to be truly “informational”, the public can request information but not submit comments that would influence the EA’s decision in the permitting processing. In addition, the public should not be allowed to appeal the EA’s decision to accept the application package to the local Solid Waste Hearing Panel.

Since new and revised SWFPs cannot be issued without proper land use approvals and the preparation of California Environmental Quality Act (CEQA) documents, the proper avenue for the public to submit comments or appeal the project is during the environmental review period and to the local body that has authority to approve or reject the CEQA document. CEQA is a comprehensive unifying process that considers all public comments and evaluates a wide spectrum of environmental impacts under the jurisdictions of multiple regulatory agencies. To allow the public to comment on the SWFP application package is redundant of the CEQA process and is unfair to the operator since the CEQA document has already been approved. Furthermore, the proposed regulations do not provide a decision making process for the EAs on how to consider public comments in the permitting process.

We are suggesting minor revisions to the definition of “Informational Meeting” as proposed in Section 21563(d)(4) Title 27 CCR:

“Informational Meeting - means a meeting where the public is invited to hear ~~and comment~~ on the ~~preliminary~~ determination of the action to be taken by the EA on an accepted application package. The meeting is strictly informational...”

4. **§21660.1(b) Publication of Notice for RFI Amendment and Permit Modification Applications, page 12, line 28.** According to the proposed regulations, the operator will be responsible for preparing and posting at the time the application is submitted to the EA a temporary notice at the facility entrance that meets the requirements of §21660.1(a), Title 27 CCR. We have no objections to posting the notice at the entrance of our landfills. However, the responsibility for preparing the notice should be designated to the EA since the EA has the pertinent information required for the public notice. For example, the EA would have information on when they received the RFI amendment/SWFP modification application, date by which they are required to act on the application package, the EA’s preliminary finding, information on the hearing panel process pursuant to Public Resources Code §44307, etc. As the operator, we do not have that information nor do we want to provide inaccurate information to the public. We suggest alternative language for §21660.1(b):

"In addition to the EA requirements in §21660(a), the ~~operator~~ EA shall prepare and the operator shall post ~~at the time the application is submitted to the EA a temporary~~ notice at the facility entrance that meets the requirements of §21660.1(a); ~~in addition the EA shall ensure that notices are distributed for RFI amendment and solid waste facilities permit modification applications as specified below that contain information pursuant to §21660.1(a).~~ The publication (in hard copy or electronically) shall occur at one or more of the following locations 10 days prior to EA taking action pursuant to §21666(a) or §21650(a):"

5. **§21660.4 (a) Content of Notice of New and Revised Permit Applications Using Substituted Meeting or Hearing, page 14, line 38.** The proposed regulations would allow the EA to accept an application for a new or revised SWFP if a substituted public meeting was conducted a year prior to the EA filing the application. Even though the informational meeting requirement has been satisfied, the EA still needs to provide public noticing of the accepted application. We have no objections to the public noticing. However, we do object to the public noticing containing information regarding the submittal of comments and the possibility of the public challenging the EA's preliminary determination to the local Solid Waste Hearing Board as proposed in §§21660.4(a)(9) and (a)(10). The appropriate time for the public to bring forth their comments and concerns is during the substituted meeting or during the land use/CEQA approval process. To reopen the commenting period months after the operator has obtain all environmental clearances creates unnecessary burden and scrutiny for the operator. Therefore, §§21660.4(a)(9) and (a)(10) should be deleted.
6. **§21660.3(a) Contents of Notice of New and Revised Permit Applications and EA Conducted Informational Meeting, page 13, line 44.** IWMD suggests deleting §21660.3(a)(7) which references §21665(c)(1). §21665(c)(1) is in reference to RFI amendments and insinuates that in order to process a new SWFP application or to revise the SWFP, no additional CEQA will be prepared or the CEQA process has been completed. In some circumstances, at the time the operator submits the application to the EA, CEQA has yet to be completed. Therefore, to reference §21665(c)(1) would conflict with §21570(f)(3)(B).

Minor Issues

7. **Suggested Alternative Language for §21620. CIWMB – Change in Operation, page 5, line 30.**

(a) ~~Any applicant~~ This section applies to any operator proposing to make a significant change in the design or operation (as defined in ~~subdivision~~ subsection 21663(a)) of the facility, where such change is subject to the authority of the EA acting pursuant to thethat the solid waste facilities permit requires revision pursuant to §21665(e) or §21620(a)(4), in which case the operator shall comply with §21620(a)(4).

8. **Alternative 2 Optional Minor Change List, page 6, line 27.** In general, IWMD supports the Alternative 2 Optional Minor Change List to supplement the Alternative 1 Minor Change List. Where applicable, we have provided comments and suggested language changes. In addition, we suggest that language be added that would allow an EA and the operator to develop a minor change list based on local conditions. The minor change list would be executed by a memorandum of understanding or Stipulated Agreement.

- (i) Replacement of an existing environmental or operational monitoring point that has been damaged or rendered inoperable, without *significant* change to location or design of the monitoring point.

We suggest that the word “*significant*” be added in order to allow the operator some flexibility in deviating from the original monitoring point design and location. In some situations, a monitoring point becomes inoperable due to improper siting, design, or malfunction. In addition, the design of the monitoring point may no longer meet industry or regulatory standards and therefore needs to be redesigned accordingly.

- (iii) Changes in *the design and location of tanks/containers used for storage of materials, site offices, fee booths, roads* that does not interfere with the design and operation of the facility.

We suggest adding language that would allow flexibility in relocating and changing the design of various structures and roadways due to changing site conditions, as in the case of landfills. Note that EAs do not issue individual permits for storage tanks/containers, site offices, and fee booths.

- (xv) ~~Purchase~~ Acquisition of property adjacent to the facility if not used for solid waste operations.

IWMD suggests replacing the word “Purchase” with the word “Acquisition” since adjacent property can also be acquired through gifts and deeds.

- (iii) the notice is for informational purposes only and is not subject to EA compliance measures; however, if the EA determines ~~at a later date~~ within 30 days of receiving the notification that the change does not meet the criteria for minor change, the EA may require the operator to comply with all applicable requirements; and

We believe that EAs should be given a timeframe to determine if a change does not qualify as a minor change. Thirty days should provide enough time for EAs to object to the change and require the operator to undo the change or submit an application for a RFI amendment or permit revision. The proposed regulations should not be open ended, allowing an EA unspecified timeframe to inform the operator the change did not meet the requirements of a minor change when the operations has evolved around that change.

9. **§21660.1(a) Content of Notice for RFI Amendment and Permit Modification Applications, page 12, line 19.**

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We suggest supplementing additional language in §21660.1(a)(6) to reference EA findings for the Modified Permit process:

21660.1(a)(6) EA finding or preliminary finding pursuant to §21665(c)(1) or §21665(d)(1).

10. Impact of Proposed Permit Implementation Regulations on §10303, Article 1, Chapter 3, Subdivision 1, Division 1, Title 27 CCR. Though not commonly referenced, §10303, Title 27 CCR outlines timeframes for EAs to process permits. The CIWMB needs to determine if §10303, Tables 1 and 2 will be impacted by the proposed regulations.

We thank you for considering our comments. If any of our major comments are not going to be incorporated in the next text, we may request a conference call with the CIWMB to discuss the reasons.

If you have any questions, please contact Mike Wong at (714) 834-4115 or via e-mail at mike.wong@iwmd.ocgov.com.

Sincerely,

ORIGINAL SIGNED

Kevin H. Kondru, P.E., Manager
Environmental Services

cc: Patricia Henshaw, LEA
Howard Levenson, CIWMB
Gary Brown, IWMD
Mike Giancola, IWMD
Dick Harabedian, IWMD
David Tieu, IWMD
John Tzeng, IWMD
Po Wang, IWMD
Tom Wright, IWMD
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